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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

**In the Matter of**

Amendment to Section 73.202(b)  
Table of Allotments,  
FM Broadcast Stations  
(**CLOVERDALE, Alabama**)

) MM Docket No. 94-78  
)  
) RM-8472  
)  
)  
)  
)

TO: John A. Karousos,  
Acting Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau

**COMMENTS**

Slatton-Quick Company, Inc., licensee of standard broadcast Station WLAY and of FM broadcast Station WLAY-FM, Muscle Shoals, Alabama, and Benny Carle Broadcasting Co., licensee of standard broadcast Station WBCF and of FM broadcast Station WXFL, Florence, Alabama (hereafter Respondents), by their attorneys, and pursuant to Sections 1.415 and 1.420 of the Rules, hereby submit their Comments in opposition to the proposed allotment of Channel 254A at Cloverdale, Alabama.<sup>1/</sup> In support thereof, Respondents hereby respectfully state as follows:

**I. INTRODUCTION**

1. On July 13, 1994, the Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau, issued a Notice of Proposed Rule Making (DA 94-735), looking toward the allotment of

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<sup>1/</sup> The Comment deadline, September 3, 1994, was a Saturday. The instant Comments are being filed on the next business day, Tuesday, September 6, 1994, and, therefore, are timely filed under Section 1.4(e)(1) and (2) of the Rules.

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FM Channel 254A at Cloverdale, Alabama. The Notice was issued in response to a petition for rule making filed on behalf of Pulaski Broadcasting, Inc. (hereafter Pulaski).<sup>2/</sup> According to the Acting Chief, Pulaski represented that Cloverdale is an incorporated town attributed with a population of 610 persons in the 1990 U.S. Census and that Cloverdale has its own local government, police protection and a volunteer fire department (Notice, ¶2).

2. The Acting Chief went on to observe that under Section 307(b) of the Communications Act of 1934, as amended, the Commission is obliged to allot channels to "communities", which the Commission has traditionally defined as "geographically identifiable population groupings" (Notice, ¶3). The Acting Chief stated that the Commission was "unable to confirm that Cloverdale is listed as an incorporated community in the U.S. Census", but rather in fact the Census lists Cloverdale as a "Division of Lauderdale County", Alabama (Ibid.). Pulaski was, in view of the "noted discrepancy", asked to provide evidence to demonstrate that Cloverdale is incorporated or that it contains other indicia of a community such as a newspaper, social, economic or cultural organizations, municipal services, or governmental units that identify themselves specifically with Cloverdale (Ibid.).

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<sup>2/</sup> Pulaski is the licensee of standard broadcast Station WKSR and of FM broadcast Station WINJ, Pulaski, Tennessee. Pulaski, Tennessee, is located circa 50 miles northeast of Cloverdale.

## **II. STATEMENT OF INTEREST**

3. Respondent, Slatton-Quick Company, Inc., is the licensee of standard broadcast Station WLAY, which commenced broadcasting January 15, 1933, and operates full-time on 1450 kHz with power of 1 KW at Muscle Shoals, Alabama. It is also the licensee of WLAY-FM, which commenced broadcasting October 28, 1964, and operates on 105.5 mHz with effective radiated power (ERP) of 530 watts and height above-average terrain (HAAT) of 743 feet at Muscle Shoals.

4. Respondent, Benny Carle Broadcasting Co., is the licensee of standard broadcast Station WBCF, which commenced broadcasting in 1946, and operates full-time on 1240 kHz with power of 1 KW at Florence, Alabama. It is also the licensee of FM broadcast Station WXFL, which commenced broadcasting in February 1992, and operates on 96.1 mHz with ERP of 2.45 KW and HAAT of 518 feet at Florence.

5. Cloverdale is located approximately ten miles northeast of Florence and 15 miles northeast of Muscle Shoals. Were the Commission to allot Channel 254A at Cloverdale, Respondents' broadcast stations would compete for audience and revenues with the Cloverdale station. Respondents, therefore, are interested parties entitled to participate in this rule making proceeding.

### III. THE MERITS

6. The Acting Chief is right: contrary to Pulaski's claim, Cloverdale is not an incorporated community (see annexed statement from the Shoals Chamber of Commerce, signed by a Lauderdale County Probate Judge, a Lauderdale County Revenue Commissioner and a representative of the Chamber of Commerce - Appendix A hereto). Moreover, contrary to Pulaski's claim, Cloverdale does not have its own local government, police protection and fire department. Indeed, according to the Chamber (Appendix A hereto):

- Cloverdale has no police department
- Cloverdale has no fire department
- Cloverdale has no mayor or any other taxes paid officials of its own
- Cloverdale derives practically all of its public and community services from the City of Florence and Lauderdale County.

7. As a small unincorporated community, Cloverdale has no newspaper or broadcast media (see Gale Directory of Publications and Broadcast Media (1993) p. 11 - Appendix B hereto). It is beyond cavil then that Cloverdale is not a community as the Commission defines it nor does it contain significant community indicia, that is, organizations, municipal services or governmental units that identify themselves specifically with Cloverdale.

8. In these circumstances, long standing precedent compels the conclusion that Cloverdale is not a community deserving of an FM channel allotment under Section 307(b) of the Communications Act. Gretna, et. al., Florida, 6 FCC Rcd 633 (1991); Oak Grove, Florida, 5 FCC Rcd 3774 (1990); Statenville, Georgia, 5 FCC Rcd 2685 (1990); East Hemet, et. al., California, 4 FCC Rcd 7895 (1989); Coker, Alabama, 43 RR2d 190, 193 (1978); Vimvile, Mississippi, 55 RR2d 256, 258 (1983); and Oak Beach and Bayshore, NY, 57 RR2d 1275, 1277, 1279 (1985).

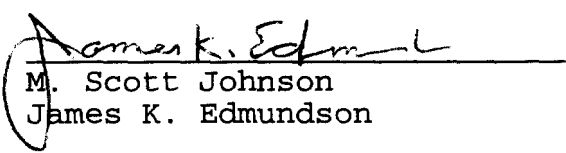
9. The United States Court of Appeals for the District of Columbia Circuit has affirmed that a population grouping is not entitled to an FM allotment, "if the Commission determines that the [proposed] place of license is not a 'community' for section 307(b) purposes because it is not an identifiable population grouping with common local interests", citing Penacook, N.H., 2 FCC Rcd 459, 460 (1987). James Reeder v. Federal Communications Commission, 865 F.2d 1298, 1305 (D.C. Cir. 1989). Based upon the long standing FCC and judicial interpretations of Section 307(b), the Acting Chief should therefore conclude that Cloverdale is not a community for FM allotment purposes.

**WHEREFORE**, Respondents urge the Acting Chief not to allot Channel 254A to Cloverdale, Alabama.

Respectfully submitted,

**SLATTON-QUICK COMPANY, INC.  
BENNY CARLE BROADCASTING CO.**

By:

  
M. Scott Johnson  
James K. Edmundson

GARDNER, CARTON & DOUGLAS  
1301 K Street, N.W.  
Suite 900, East Tower  
Washington, D.C. 20005  
(202) 408-7100

DATED: September 6, 1994  
[89046]

## **APPENDIX A**



## SHOALS CHAMBER OF COMMERCE

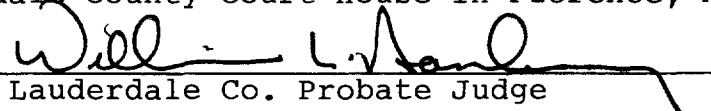
104 South Pine Street • Florence, Alabama 35630 • (205) 764-4661 • FAX (205) 766-9017  
1105-A Hwy. 72 West • Tuscumbia, Alabama 35674 • (205) 383-4704 • FAX (205) 383-4734

The Chamber of Commerce of the Shoals, serving the Quad Cities of Florence, Sheffield, Tuscumbia and Muscle Shoals, Alabama, in the counties of Lauderdale and Colbert of North Alabama, has been asked to determinine the status of Cloverdale, a small community in Lauderdale county just north of the Florence city limits.

We find that Cloverdale in a non-incorporated community which derives practically all of its public and community services from the city of Florence and Lauderdale county. Cloverdale has no police department, fire department, mayor or any other taxes paid officials of its own and look to Lauderdale county officials to provide all major services such as water and electric service.

Our research included the offices of Probate, Tax Revenue, Lauderdale County Commission at Florence city hall and the Lauderdale County Court House in Florence, Alabama.

Signed

  
Lauderdale Co. Probate Judge

  
Lauderdale County Revenue Commissioner

  
For Chamber of Commerce, Florence



## **APPENDIX B**

**136 The Clanton Advertiser**  
PO Box 1379  
Clanton, AL 35045  
Phone: (205)755-5747  
Fax: (205)755-5857  
Community newspaper. Founded: 1890. Frequency: 2x/wk. (Wed. and Fri.).  
Printing Method: Offset. Cols./Page: 6. Col. Width: 26 nonpareils. Col. Depth: 301  
agate lines. Key Personnel: Michael R. Kelley, Editor and Publisher; Dan Cook,  
Advertising Dir.; David McElroy, Gen. Mgr. Subscription: \$23; \$30 out of state.  
Ad Rates: PCI: \$5.81 Circulation: Paid \$4,000 Free \$8,500  
Member, Boone Newspapers, Inc. Formerly: Independent Advertiser (1990).

**137 WEZZ-FM - 97.7**  
Hwy. 22 W.  
PO Box 1820  
Clanton, AL 35045  
Phone: (205)755-0980  
Fax: (205)280-0980  
Format: Country; Contemporary Country. Network(s): ABC; Alabama Radio  
(ALANET). Owner: James Dennis; (205)755-0966. Founded: 1953. Formerly:  
WKLF-FM. Operating Hours: 5 a.m.-10 p.m.; 5% network, 95% local. Key  
Personnel: James Dennis, Mgr.; Robert E. King, Program Dir.; Ricky Trammell,  
Music Dir. Wattage: 3000. Ad Rates: \$5-\$9 for 30 seconds; \$7-\$11 for 60 seconds.  
Additional Contact Information: (205)755-0966.

**138 WKLF-AM - 980**  
Hwy. 22 W.  
PO Box 1820  
Clanton, AL 35045  
Phone: (205)755-0980  
Fax: (205)280-0980  
Format: Religious. Network(s): ABC; Alabama Radio (ALANET). Owner: James  
Dennis; (205)755-0966. Founded: 1947. Operating Hours: 6 a.m.-sunset; 5%  
network, 95% local. Key Personnel: James Dennis, Mgr.; Robert E. King, Program  
Dir.; Margie Cox, Music Dir. Wattage: 1000. Ad Rates: \$5-\$9 for 30 seconds; \$7-  
\$11 for 60 seconds. Additional Contact Information: (205)280-0980.

### CLAYTON† (G7), pop. 1,589.

SE AL. Barbour Co. 50 mi. SE of Montgomery. Residential.

**139 The Clayton Record**  
PO Box 69  
Clayton, AL 36016  
Phone: (205)775-3254  
Fax: (205)775-8554  
Local newspaper. Founded: 1870. Frequency: Weekly (Thurs.). Printing Method:  
Offset. Cols./Page: 6. Col. Width: 24 nonpareils. Col. Depth: 294 agate lines. Key  
Personnel: Bertie G. Parish, Editor and Publisher. Subscription: \$12; \$15 out of  
state.  
Ad Rates: BW: \$300 Circulation: \$2,500  
PCI: \$3.50

### CLEARWATER

**140 WHBR-TV - Channel 33**  
PO Box 6922  
Clearwater, AL 34618  
Phone: (205)964-7033  
Format: Christian. Network(s): Christian Television. Owner: Christian Television  
Corp. of Pensacola/Mobile Inc., at above address; (813)535-5622. Founded: 1986.  
Operating Hours: 7 a.m.-12 a.m. ADI: Mobile, AL-Pensacola (Ft. Walton Beach),  
FL. Key Personnel: Bob D'Andrea, Pres.; Don MacAllister, V.P.; David Mayo,  
Office Mgr.; Cardin A. Hesselton, Sales Dir./Program Mgr.; William Cobert, Chief  
Engineer. Local Programs: *Sing Out Gulf Coast*, 8 p.m. Sat.; contact David Mayo.  
*Church of the Week*, 8.30 p.m. Sat.; contact David Mayo. Ad Rates: \$197-\$395 per  
unit.

### COLUMBIANA† (E4), pop. 2,655.

C. AL. Shelby Co. 30 mi. SE of Birmingham. Wire, foundry, textile mills. Timber.  
Diversified farming.

**141 Shelby County Reporter**  
PO Box 947  
Columbiana, AL 35051  
Phone: (205)669-3131  
Fax: (205)669-4217  
Community newspaper. Founded: 1843. Frequency: Weekly (Wed.). Printing  
Method: Offset. Cols./Page: 6. Col. Width: 22 nonpareils. Col. Depth: 280 agate  
lines. Key Personnel: Chris Platz, Mng. Editor; Kim N. Price, Publisher.  
Subscription: \$19.99.  
Ad Rates: BW: \$632.10 Circulation: 6,500  
4C: \$1,132.10  
SAU: \$4.90  
Member, Boone Newspapers, Inc.

### CULLMAN† (E2), pop. 13,084.

N. AL. Cullman Co. 34 mi. S. of Decatur. Manufactures lumber, cotton oil  
products, chrome trim, files, air conditioning compressors, missile components,  
truck wheels, cigars, boxes, textiles, fertilizer, headings, staves. Hatcheries. Pine,  
oak timber. Agriculture. Cotton, poultry.

**142 Community Shoppers Guide**  
Community Shopper's Guide, Inc.  
PO Box 1214  
Cullman, AL 35056-1214  
Phone: (205)734-1532  
Shopper. Founded: 1981. Frequency: Weekly (Wed.). Printing Method: Offset.  
Cols./Page: 6. Col. Width: 19 nonpareils. Col. Depth: 210 agate lines. Key  
Personnel: Frances Cooper, Publisher. Subscription: Free.  
Ad Rates: BW: \$549 Circulation: Free \$33,100  
4C: \$849  
PCI: \$6.10

Ad Rates: GLR - general line rate; BW - one-time black & white page rate; 4C - one-time four color page rate; SAU - standard advertising unit rate;

CNU - Canadian newspaper advertising unit rate; PCI - per column inch rate.

Circulation: ★ - ABC; △ - BPA; ◆ - CAC; ● - CCAB; □ - VAC; ⊕ - PO Statement; ‡ - Publisher's Report; Boldface figures - sworn; Light figures - estimated.

Entry type: □ - Print; ● - Broadcast.

**143 The Cullman Times**  
300 4th Ave. SE  
Cullman, AL 35055  
Phone: (205)734-2131  
Fax: (205)734-7310  
General newspaper. Founded: 1901. Frequency: Tues.-Fri. (morn.); Sun. (morn.).  
Printing Method: Offset. Cols./Page: 8. Col. Width: 25 nonpareils. Col. Depth: 301  
agate lines. Key Personnel: Robert Bryan, Editor and Publisher; Bill McCartney,  
Advertising Mgr.; Sam Mazzara, Circulation Mgr. Subscription: \$40.  
Ad Rates: SAU: \$6.75 Circulation: Tues.-Fri. ★9,407  
Sun. ★10,796

Member Bryan Publications.

**144 The Cullman Tribune**  
Blalock Publishing  
219 Second Ave. SE  
Cullman, AL 35055  
Phone: (205)739-1351  
Fax: (205)739-1563  
Local newspaper. Founded: 1874. Frequency: Weekly (Thurs.). Printing Method:  
Offset. Trim Size: 13 x 21. Cols./Page: 6. Col. Width: 23 nonpareils. Col. Depth:  
224 agate lines. Key Personnel: Delton Blalock, Editor and Publisher; Barbara  
Blalock, Co-Publisher/Bus. Mgr.; Nina Hurst, Advertising Mgr.; Dennis Blalock,  
Circulation Mgr.; Hazel Blalock, Circulation Mgr.; Deanna Chapman, Account  
Mgr. Subscription: \$15; \$25 out of state.  
Ad Rates: PCI: \$4.75 Circulation: \$13,400

**145 WFMH-AM - 1460**  
PO Box 280  
Cullman, AL 35056-0280  
Phone: (205)734-3271  
Format: Adult Contemporary; Country; Gospel. Simulcasts WFMH-FM. Founded:  
1950. Key Personnel: B.C. Eddins, Gen. Mgr. Wattage: 5000.

**146 WFMH-FM - 101.1**  
PO Box 280  
Cullman, AL 35056-0280  
Phone: (205)734-3271  
Format: Adult Contemporary; Country; Religious. Simulcasts WFMH-AM.  
Founded: 1949. Key Personnel: B.C. Eddins, Gen. Mgr. Wattage: 87,000.

**147 WKUL-FM - 92.1**  
PO Box 803  
Cullman, AL 35056  
Phone: (205)734-0183  
Format: Contemporary Country. Network(s): ABC. Formerly: WKLN-FM. Oper-  
ating Hours: 5 a.m.-midnight. Key Personnel: Ron Mosley, Gen. Mgr. Wattage:  
3000.

**148 WXXR-AM - 1340**  
1708 Brantley Ave. NW  
PO Drawer 968  
Cullman, AL 35056-0968  
Phone: (205)734-0207  
Fax: (205)734-8600  
Format: Oldies (50s, 60s, 70s). Network(s): Unistar. Owner: Larry Baker, 2039  
Sandy Ave., Cullman, AL 35055; (205)739-0425. Founded: 1946. Formerly:  
WKUL-AM. Operating Hours: 6 a.m.-midnight; 90% network, 10% local. ADI:  
Birmingham (Gadsden), AL. Key Personnel: Larry Baker, Owner/Operations Dir./  
Sec.-Treas.; Roger Myers, Owner/Pres./Gen. Mgr.; Lisa Stewart, PR/Agency  
Marketing Consultant. Wattage: 1000. Ad Rates: \$5.40-\$8.80 for 30 seconds;  
\$6.80-\$11.20 for 60 seconds. Additional Contact Information: Roger Myers, Joint  
Owner, 1506 Pinecrest, Cullman, Alabama 35055.

### DADEVILLE† (G5), pop. 3,263.

E. AL. Tallapoosa Co. 48 mi. NW of Columbus, GA. Resort area. Lumber, textile  
mills; cotton gins. Timber. Agriculture.

**149 WDV-FM - 88.7**  
PO Box 284  
Dadeville, AL 36853  
Phone: (205)825-6426  
Format: Adult Contemporary. Network(s): USA Radio. Owner: Tallapoosa County  
Broadcasting Inc., at above address. Founded: 1990. Key Personnel: Donald  
Bailey, Pres.; Philip L. Williams, Gen. Mgr. Wattage: 9000.

**150 WZLM-FM - 97.3**  
Hwy. 280  
PO Box 909  
Alexander City, AL 35010  
Format: Adult Contemporary. Network(s): ABC. Founded: 1989. Wattage: 3000.

### DALEVILLE (G8).

SE AL. Dale Co. 15 mi. S. of Ozark.

**151 Cablevision Industries**  
Box 698  
Daleville, AL 36322  
Phone: (205)598-6333  
Fax: (205)598-2107  
Formerly: Wometco Cable TV of Alabama. Key Personnel: JoBeth Helbling, Mgr.  
Cities Served: Daleville, Clayhatche, Level Plains, Midland City, Grimes,  
Pinckard, Fort Rucker, Napier Field, Newton, and other communities in Dale  
county, AL: 35 channels.

**152 WTKN-AM - 1560**  
PO Box 81  
Daleville, AL 36322  
Phone: (205)598-8810  
Fax: (205)598-6506  
Format: News; Talk. Network(s): Sun Radio; Agrinet Farm Radio. Founded: 1983.  
Formerly: WRDJ-AM (1991). Operating Hours: Sunrise-sunset; 5% network, 95%  
local. Key Personnel: Wyatt Cox, Gen. Mgr./News and Program Dir.; Tom Holter,  
Sales Mgr. Wattage: 5000. Ad Rates: \$2.50-\$5 for ten seconds; \$5-\$10 for 30  
seconds; \$7.50-\$15 for 60 seconds.

**CERTIFICATE OF SERVICE**

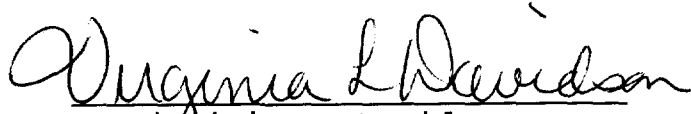
I, Virginia L. Davidson, a secretary in the law firm of Gardner, Carton & Douglas, do hereby certify that true copies of the foregoing **COMMENTS** were sent September 6, 1994, by first-class United States mail, postage prepaid, or as indicated by hand to the following:

John A. Karousos, Acting Chief  
Allocations Branch  
Policy and Rules Division  
Mass Media Bureau  
Federal Communications Commission  
2025 M Street, N.W., Room 8322  
Washington, D.C. 20554  
(By Hand)

Station WZLQ(FM)  
San Dow Broadcasting  
Post Office Box 2639  
Gulfport, Mississippi 39503

Hershel Lake, President  
Pulaski Broadcasting, Inc.  
Post Office Box 738  
Pulaski, Tennessee 38478

Kirk A. Tollett  
Commonsouth Media Associates  
4001 Highway 78 East  
Jasper, Alabama 35501

  
Virginia L. Davidson